

United States
12
Circuit Court of Appeals
For the Ninth Circuit.

GEORGIA CASUALTY COMPANY, a Corpora-
tion,

Appellant,

vs.

LAURETT BOYD,

Appellee.

Transcript of Record.

Upon Appeal from the United States District Court for the
Northern District of California, Southern Division.

FILED

MAR 26 1925

PAUL P. O'BRIEN,
CLERK

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS
OF RECORD.

HARRY I. STAFFORD, Esq., DEAN CUNHA,
Esq., Flood Building, San Francisco,
Attorneys for Plaintiff.

REDMAN & ALEXANDER, Esqs., 333 Pine
Street, San Francisco,
Attorneys for Defendant.

In the United States District Court for the North-
ern District of California, Southern Division.

No. 18,076.

LAURETT BOYD,

Plaintiff,

vs.

GEORGIA CASUALTY COMPANY, a Corpora-
tion,

Defendant.

SECOND AMENDED COMPLAINT ON IN-
DEMNITY INSURANCE POLICY.

Plaintiff complains of defendant and alleges:

1.

That at all times herein mentioned the defendant was and now is a corporation duly organized and existing under the laws of the State of California to engage in the physicians and surgeons indemnity insurance business in the said State of California.

That the principal place of business of the defendant in said State of California was and is in the City and County of San Francisco.

2.

That at all times herein mentioned, and more particularly during the month of November, 1925, one George O. Jarvis was a physician and surgeon licensed to practice medicine and surgery in the State of California under and by virtue of the laws thereof. That previous to said month of November, 1925, the defendant at the City and County of San Francisco, State of California, issued to the said George O. Jarvis a policy of physicians and surgeons indemnity insurance, wherein, plaintiff is informed and believes and upon such information and belief alleges, said defendant agreed upon the payment of a certain specified premium to indemnify the said George O. Jarvis against any liability not exceeding the sum of Five Thousand (\$5,000.00) [1*] Dollars with taxed court costs and interest which should arise against the said George O. Jarvis in favor of any person or persons who would sustain any personal bodily injuries by means of the negligence or carelessness of George O. Jarvis in the practice of his aforementioned profession. That plaintiff is informed and believes and upon such information and belief alleges that as conditions precedent to said defendant's assumption of liability under said policy as aforesaid said George O. Jarvis was required to pay said premium as aforesaid; give said defendant

*Page-number appearing at the foot of page of original certified Transcript of Record.

immediate notice of any action brought against said George O. Jarvis for any personal injuries sustained as in said policy provided, and co-operate with said defendant in defending any suit so brought as aforesaid; and said plaintiff is informed and believes and upon said information and belief alleges that said conditions as aforesaid were the only conditions contained in said policy so issued as aforesaid. That the said policy of physicians and surgeons indemnity insurance so issued as aforementioned by the defendant to the said George O. Jarvis was in full force and effect during the month of November, 1925.

3.

That plaintiff is informed and believes and upon such information and belief alleges that the said George O. Jarvis has performed all of the conditions of said policy on his part to be performed.

4.

That in the month of November, 1925, the exact date of which plaintiff is unable to state, the plaintiff consulted George O. Jarvis in his capacity as such physician and surgeon and became a patient of the said George O. Jarvis, and plaintiff paid to said George O. Jarvis a sum of money demanded by him for his services as such physician and surgeon.

5.

That thereafter and in the said month of November, 1925, while the relation of patient and physician and surgeon continued to exist between plaintiff and George O. Jarvis the said George O. Jarvis advised

an [2] operation in the right nasal region of the plaintiff and thereupon the said George O. Jarvis so negligently and carelessly operated upon and treated the said plaintiff as to cause personal bodily injury to the plaintiff; and that thereafter the said plaintiff commenced and maintained an action in the Superior Court of the State of California, in and for the City and County of San Francisco, against the said George O. Jarvis for damages for the bodily injuries so sustained by her. That said action was numbered 174,698 in the files of said court and that said action was thereafter tried and judgment was rendered on the 17th day of October, 1927, in favor of the plaintiff and against the said George O. Jarvis in the sum of Five Thousand (\$5,000) Dollars, together with taxed costs in the sum of Seventy-six and 50/100 (\$76.50) Dollars; that said judgment was docketed in the office of the Clerk of said court on the 19th day of October, 1927, and has become final, and said judgment is now wholly unsatisfied and unpaid.

6.

That on the 16th day of November, 1927, the said George O. Jarvis, upon his voluntary petition filed in the Bankruptcy Court of the Southern Division of the United States District Court for the Northern District of California and numbered 16,537 in the files thereof, was adjudged a bankrupt. That included in the schedules filed by said George O. Jarvis in said proceeding was this judgment held by the plaintiff herein. That previous and again subsequent to said adjudication of bankruptcy plaintiff

demanding of defendant the amount of defendant's liability under and by virtue of the terms of the aforementioned policy of insurance and defendant failed and refused, and still fails and refuses to pay plaintiff the amount of said liability or any part thereof.

7.

That there is now due, owing and unpaid from the defendant to plaintiff the sum of Five Thousand (\$5,000.00) Dollars, together with the costs as aforementioned amounting to Seventy-six and 50/100 (\$76.50) Dollars, and interest on the sum of Five Thousand Seventy-six and 50/100 (\$5,076.50) [3] Dollars, since the 17th day of October, 1927, no part of which has been paid.

WHEREFORE, plaintiff prays judgment against said defendant for the sum of Five Thousand Seventy-six and 50/100 (\$5,076.50) Dollars, and interest on said sum from and after the said 17th day of October, 1927, and for such other and further relief as to the Court may seem meet and proper in the premises.

HARRY I. STAFFORD,
Attorney for Plaintiff.

Received a copy of the within amended complaint this 30th day of April, 1928.

REDMAN & ALEXANDER,
Attorney for Defendant.

[Endorsed]: Filed May 2, 1928. [4]

State of California,
City and County of San Francisco,—ss.

Laurett Boyd, being first duly sworn, deposes and says: That she is the plaintiff in the above-entitled action; that she has read the foregoing second amended complaint and knows the contents thereof; that the same is true of her own knowledge except as to the matters which are therein stated on her information or belief, and as to those matters, that she believe it to be true.

Mrs. LAURETT BOYD.

Subscribed and sworn to before me, this 30th day of April, 1928.

[Seal] EDWARD P. McAULIFFE,
Notary Public in and for the County of San Francisco, State of California.

My commission expires Dec. 31, 1930.

[Endorsed]: Filed May 2, 1928. [5]

[Title of Court and Cause.]

ANSWER TO SECOND AMENDED COMPLAINT.

Comes now defendant above named and answering plaintiff's second amended complaint on file herein denies and alleges as follows:

1. Denies the defendant was and/or now is or ever was a corporation duly or at all organized and,

or existing under the laws or any law of the State of California.

2. Alleges that it has no information or belief upon the subject sufficient to enable it to answer the allegations of said second amended complaint that at all times mentioned in said second amended complaint and more particularly during the month of November, 1925, one George O. Jarvis was a physician and surgeon licensed to practice medicine and surgery in the State of California under and by virtue of the laws thereof and therefore and upon that ground denies each and every of said allegations. Denies that previous to said month of November, 1925, or at any time, the defendant at the City and County of San Francisco, State of California, or any place, issued to said George O. Jarvis a policy of physicians and, or surgeons indemnity insurance, or any policy of insurance, wherein said [6] defendant agreed upon the payment of a certain specified or any premium or at all to indemnify the said George O. Jarvis against any liability not exceeding the sum of \$5,000.00, or any sum and, or either taxed court costs and/or interest which should arise against the said George O. Jarvis in favor of any person or persons who would sustain any personal bodily injuries or injury by means of the negligence or carelessness of George O. Jarvis in the practice of his alleged profession, or in favor of any other person or against any liability whatsoever. And denies that as conditions or any condition preceding or at all to the said defendant's assumption of liability under said policy as alleged, said George

O. Jarvis was required to pay the alleged or any premium and, or give immediate or any notice of any action brought against said George O. Jarvis for any personal injuries sustained as in said alleged policy provided and/or co-operate with said defendant in defending any suit so brought as alleged; and denies that said alleged conditions were the only conditions contained in said alleged policy so or at all issued as alleged. And denies that the alleged policy of physicians and/or surgeons indemnity insurance so or at all issued as alleged or otherwise by the defendant to the said George O. Jarvis was in full or any force or effect during the month of November, 1925.

3. Denies that said George O. Jarvis has performed all or any of the conditions of the alleged or any policy issued by defendant on his part to be performed.

4. Alleges that it has no information or belief upon the subject sufficient to enable it to answer the allegations of paragraphs 4 and 5 of said second amended complaint, and therefore and upon that ground denies each and every allegation in said paragraphs contained. [7]

5. Denies that previous to or again or at all subsequent to the alleged adjudication of bankruptcy of said George O. Jarvis or at any time plaintiff demanded of defendant the amount of defendant's alleged liability under and/or by virtue of the terms of the alleged policy of insurance, and in this behalf denies that there is any liability on the part of defendant under and/or by virtue of the terms or

any term of the alleged or any policy of insurance or at all.

6. Denies that there is now or ever was due and/or owing and/or unpaid from the defendant to plaintiff the sum of \$5,000.00 or any sum, together with the alleged costs, amounting to \$76.50, or any sum, and/or interest on the sum of \$5,076.50, or any interest, since the 17th day of October, 1927, or for any period of time or at all. And denies that the defendant is now or ever was obligated to pay in the amounts alleged or any thereof, or in any sum or amount at all; and denies upon lack of information and belief that no part of said sums has been paid.

7. Further answering said second amended complaint and as a separate defense thereto, said defendant alleges that in a written application executed by said George O. Jarvis for a physician's liability policy he warranted as follows:

“No claim or suit is pending against me for damages on account of alleged error, mistake or malpractice, and no claim has been paid by me, and no judgment has been entered against me for damages on account of alleged error, or mistake, or malpractice, except as follows: None.”

That defendant is informed and believes and therefore alleges that at the time said warranty was made in said application there was pending against said George O. Jarvis a claim for damages on account of alleged error, mistake or malpractice, and that a claim had been paid by said George O. Jarvis

on account of [8] alleged error or mistake or malpractice; that said warranty was made by said George O. Jarvis with full knowledge upon his part that the same was untrue and with intent to mislead defendant and induce defendant to issue the policy of insurance applied for; that said warranty was material to the acceptance of the risk and the issuance of the policy applied for.

8. Further answering said second amended complaint, and as a separate defense thereto, defendant alleges that the policy of insurance issued by defendant to said George O. Jarvis contained a condition that no action should be brought against defendant under or by reason of said policy unless it shall be brought by and in the name of the assured for a loss defined in said policy after final judgment has been rendered in a suit described in said policy and within one year from the date of such judgment.

WHEREFORE, defendant prays to be hence dismissed with its costs.

REDMAN & ALEXANDER,
Attorneys for Defendant. [9]

State of California,
City and County of San Francisco,—ss.

F. M. Ayer, being first duly sworn, deposes and says: That he is claims superintendent of defendant and as such is authorized to verify the foregoing answer to second amended complaint on its behalf; that he has read said answer and knows the contents thereof and that the same is true of his own knowl-

edge except as to the matters therein stated upon information or belief and that as to such matters he believes it to be true.

F. M. AYER.

Subscribed and sworn to before me this 12th day of July, 1928.

[Seal] HENRIETTA HARPER,
Notary Public in and for the City and County of
San Francisco, State of California.

Service of the within answer admitted this 12th day of July, 1928.

HARRY I. STAFFORD,
Attorney for Plaintiff.

[Endorsed]: Filed July 13, 1928. [10]

[Title of Court and Cause.]

AMENDMENT TO COMPLAINT.

Now comes the plaintiff above named and with leave of Court first had and obtained files this as and for an amendment to her complaint herein.

1.

That during the term of the said policy of insurance issued to said George O. Jarvis and described in the second amended complaint on file herein there was in full force and effect and ever since said time there has been and now is in full force and effect Act No. 3738 of the general laws of the State of California, entitled, "An act re-

lating to actions against an insurance carrier when the insured person is insolvent or bankrupt, or without property sufficient to satisfy execution on account of loss or damage insured against, and requiring policy to be exhibited in certain cases," which Act was at said time in words and figures, as follows, to wit:

“Action Against Insurance Carrier When Insured is Insolvent. Exhibit of Policy.

“Action against insurance carrier when insured is insolvent. Exhibit of policy. No policy of insurance against loss or damage resulting from accident to, or injury suffered by another person and for which the person injured is liable other than a policy of insurance under the workmen’s compensation, insurance and safety act of 1917 or any subsequent act on the same subject, or, against loss or damage to property caused by horses or other draught animals or any vehicle, and for which [11] loss or damage the person insured is liable, shall be issued or delivered to any person in this state by any domestic or foreign insurance company, authorized to do business in this state, unless there shall be contained within such policy a provision that the insolvency or bankruptcy of the person insured shall not release the insurance carrier from the payment of damages for injury sustained or loss occasioned during the life of such policy and stating that in case judgment shall be secured against the insured in an action brought by the injured person or his heirs or personal representatives, in case death resulted from the accident, then an action

may be brought against the company, on the policy and subject to its terms and limitations, by such injured person, his heirs or personal representatives as the case may be, to recover on said judgment. Upon any proceeding supplementary to execution, the judgment debtor may be required to exhibit any policy carried by him insuring against the loss or damage for which judgment shall have been obtained.”

DEERING'S GENERAL LAWS, 1923 Edition, Part One, Page 1371.

HARRY I. STAFFORD,
Attorney for Plaintiff. [12]

State of California,
City and County of San Francisco,—ss.

Laurett Boyd, being first duly sworn, deposes and says that she is the plaintiff in the above-entitled action; that she has read the foregoing amendment to complaint, that the same is true of her own knowledge except as to the matters which are therein stated on her information or belief, and as to those matters, that she believe it to be true.

LAURETT BOYD.

Subscribed and sworn to before me this 18th day of September, 1928.

[Seal] EDWARD P. McAULIFFE,
Notary Public in and for the County of San Francisco, State of California.

[Endorsed]: Filed September 18, 1928. [13]

[Title of Court and Cause.]

STIPULATION WAIVING TRIAL BY JURY.

IT IS HEREBY STIPULATED by and between the plaintiff and the defendant that a trial by jury is hereby waived in the above-entitled action and that the same may be tried by the Court sitting without a jury.

Dated: September 18, 1928.

HARRY I. STAFFORD,

Attorney for Plaintiff.

REDMAN & ALEXANDER,

Attorneys for Defendant.

[Endorsed]: Filed September 18th, 1928. [14]

[Title of Court and Cause.]

MEMORANDUM OPINION ON ORDERING
JUDGMENT FOR PLAINTIFF.

HARRY I. STAFFORD, Esq., for Plaintiff.

Messrs. REDMAN & ALEXANDER, for Defendant.

Plaintiff sues defendant upon a physician's liability policy issued by the defendant to one Dr. George O. Jarvis. Plaintiff made claim against Dr. Jarvis for his alleged malpractice in November, 1925, in treating her, and on September 21, 1926, she commenced an action in the Superior Court of the State of California, in and for the City and

County of San Francisco, against Dr. Jarvis for damages for the alleged malpractice, and thereafter obtained judgment against him in the sum of five thousand dollars, together with costs taxed at \$76.50. Said judgment was docketed in the office of the Clerk of said Superior Court on the 19th day of October, 1927, and has become final. On the 16th day of November, 1927, Dr. Jarvis was, upon his voluntary petition filed in the Bankruptcy Court of this district, adjudged a bankrupt. The evidence shows that the sum of \$355.75 has been paid to plaintiff upon said judgment through proceedings in the Bankruptcy Court. [15]

Plaintiff brings this action upon the policy under the provisions of Act 3738, Statutes of California 1919, page 776, which, stated briefly, provides that the insolvency or bankruptcy of the person insured shall not release the insurance carrier from the payment of damages for injuries sustained or loss occasioned during the life of such policy, etc.

The policy involved was issued for a year and began on the 29th day of May, 1925. The plaintiff was injured in November, 1925. Thereafter, and before action was commenced in the state court, defendant gave notice of rescission to the insured.

It is the contention of the defendant here that it is relieved from liability under the policy because of such attempted rescission based upon an alleged false statement made by the insured on application for the policy.

It appears to the Court that the right of the

plaintiff to sue for damages for injuries sustained had accrued during the life of the policy and before the attempted rescission; such right was therefore not affected by anything that may have occurred thereafter between the insurer and the insured.

It is ordered that plaintiff have judgment for \$4,720.75, together with interest on said sum from October 17, 1927, and costs.

October 10, 1928.

A. F. ST. SURE,
United States District Judge.

[Endorsed]: Filed Oct. 10, 1928. [16]

In the Southern Division of the United States District Court for the Northern District of California.

No. 18,076.

LAURETT BOYD,

Plaintiff,

vs.

GEORGIA CASUALTY COMPANY, a Corporation,

Defendant.

JUDGMENT.

This cause came on regularly for trial upon the 18th day of September, 1928, before the Court sitting without a jury, a trial by jury having been waived by written stipulation filed; Dean Cunha

and Dan R. Shoemaker, Esqrs., appearing as attorneys for plaintiff, and William C. Bacon and Harold C. Mundhenk, Esqrs., appearing as attorneys for defendant, and the trial having been proceeded with and oral and documentary evidence upon behalf of the respective parties having been introduced and closed, and the cause having been submitted to the Court for consideration and decision, and the Court, after due deliberation having rendered its decision and filed its memorandum opinion, and ordered that judgment be entered herein in accordance with said opinion in favor of plaintiff for the sum of \$4,720.75, together with interest thereon at the rate of seven per cent (7%) per annum from October 17th, 1927, and for costs.

NOW, THEREFORE, by virtue of the law and by reason of the premises aforesaid, it is considered by the Court that Laurett Boyd, plaintiff, do have and recover of and from Georgia Casualty Company, a corporation, defendant, the sum of Five Thousand Forty-four and Seventy-seven/100ths (\$5,044.77) Dollars, together with her costs herein expended taxed at \$32.00.

Judgment entered October 10th, 1928.

WALTER B. MALING,

Clerk. [17]

[Title of Court and Cause.]

STIPULATION THAT PLAINTIFF'S EXHIBIT No. 2 NEED NOT BE SET OUT IN FULL IN BILL OF EXCEPTIONS OR TRANSCRIPT ON APPEAL.

IT IS HEREBY STIPULATED AND AGREED by and between the parties hereto that Plaintiff's Exhibit No. 2 (the judgment-roll in the case of "Laurett Boyd vs. George O. Jarvis" in the Superior Court in and for the City and County of San Francisco, State of California, and numbered therein No. 174,698) need not be set out in full in defendant's bill of exceptions or in the transcript on appeal in the above-entitled action, but that the contents and substance of the same may be set out in lieu thereof, no exception or error being assigned to the introduction in evidence of said judgment-roll.

It is further stipulated that Plaintiff's Exhibit No. 2 (said judgment-roll) may be secured for and submitted to the Circuit Court of Appeals if said Court requests for examination in connection with its consideration of this case on appeal.

Dated: San Francisco, December 5, 1928.

HARRY I. STAFFORD,

Attorney for Plaintiff.

REDMAN & ALEXANDER,

Attorneys for Defendant.

[Endorsed]: Filed December 8, 1928. [18]

[Title of Court and Cause.]

ENGROSSED BILL OF EXCEPTIONS.

BE IT REMEMBERED, that the above-entitled cause came on for trial before the above-entitled Court, Hon. A. F. St. Sure presiding, on Tuesday, the 18th day of September, 1928, without a jury, the jury having been duly waived in the manner required by law by written stipulation filed in said action in the office of the Clerk of said court, Messrs. Harry I. Stafford and Dean Cunha appearing as attorneys for plaintiff, and Messrs. Redman & Alexander and W. C. Bacon appearing as attorneys for defendant. Thereupon the following proceedings were had:

Counsel for plaintiff made a brief opening statement and thereafter proceeded with the testimony.

TESTIMONY OF CHARLES BURKE, FOR
PLAINTIFF.

CHARLES BURKE was called as a witness for the plaintiff and, being duly sworn, testified as follows:

I am an employee of the County Clerk's office in the City and County of San Francisco, State of California. I am [19] here in response to a subpoena served upon my office and have been delegated to attend court here to-day and bring these papers with me. I have the original papers from

(Testimony of Charles Burke.)

the County Clerk's office in the case entitled "Laurett Boyd vs. George O. Jarvis" and numbered 174,698.

TESTIMONY OF GEORGE O. JARVIS, FOR PLAINTIFF.

GEORGE O. JARVIS, a witness on behalf of the plaintiff, was called and, being duly sworn, testified as follows:

My name is George O. Jarvis. I am a physician and surgeon duly licensed to practice in the State of California and I was such in the month of November, 1925. I am the same George O. Jarvis who was sued in the action entitled "Laurett Boyd vs. George O. Jarvis," in the Superior Court in and for the City and County of San Francisco, State of California, and numbered 174,698.

I am here in response to a subpoena and have brought with me the policy of insurance referred to in the subpoena. I made application to the Georgia Casualty Company for a policy with them and they issued a policy to me; this is a renewal of the policy first issued upon my application.

Thereupon the policy was offered in evidence and in that connection the following proceedings were had:

"Mr. CUNHA.—We now offer in evidence, if your Honor please, policy No. PH. 33967, Georgia Casualty Company, Physician's Liability Policy, wherein the assured is George O. Jarvis. The term

of the policy is twelve months, commencing on the 29th of May, 1925, and ending on the 29th of May, 1926. It stipulates for a premium of \$25. The Company's liability for damages on [20] account of injury or death of one person is \$5,000.00. The total liability is \$15,000. The policy insures the assured against loss for liability imposed by law on the assured for damages on account of bodily injury or death suffered by any person or persons in consequence of any alleged error, or mistake, or malpractice occurring in the practice of the assured's profession, as prescribed by the schedule endorsed thereon.

We offer this in evidence and ask that it be marked Plaintiff's Exhibit 1.

Mr. BACON.—If the Court please, we object to the introduction of this document in evidence, upon the ground that it is immaterial, irrelevant, and incompetent; upon the further ground that it does not appear to be the document which is pleaded in the complaint, and that there is a variance between the exhibit now offered and the document referred to in the complaint.

The COURT.—Point that out to the Court. You are just making a general objection. Point out that variance to the Court.

Mr. BACON.—Our contention is that in this case the plaintiff is seeking to recover upon a policy of insurance issued to another party, and that there is no allegation anywhere in the complaint which alleges that other persons are entitled to maintain

this action. The point was raised on demurrer, but perhaps at that time it was not the proper time to assert it before the Court. We contend that if they attempt to take advantage of a statute of the State of California, which I assume they are doing, they should have so pleaded it in their complaint.

The COURT.—Do you think there is anything in the point here made by counsel?

Mr. CUNHA.—No, I do not, your Honor. It was urged [21] before.

The COURT.—Do you want to amend and make the provisions of the statute a part of your complaint?

Mr. CUNHA.—Yes, we will ask to do that.

The COURT.—Very well, you may amend your complaint. During the recess you may prepare a written amendment.

Mr. BACON.—May we enter an objection and an exception to their being permitted to amend the complaint at this time, your Honor?

The COURT.—Yes. Objection overruled. The policy may be admitted in evidence.

Mr. BACON.—Exception.”

Thereupon the document was admitted in evidence and marked Plaintiff's Exhibit No. 1.

Plaintiff's Exhibit No. 1 is as follows: [22]

Endorsement

E-1

SPECIALTY CLASSIFICATION OF POLICY ITSELF

IS SUBSTITUTION OF THE PREMIUM CHARGED IF IT SHOULD OVERSIGHT AND AGREED THAT COVERAGE A OF THE ENDORSING AGREEMENT IS APPLIED TO BROAD

"THE COMPANY'S LIABILITY FOR SUCH DAMAGES OR ACCOUNT OF INJURY TO OR THE THE TERM OF ONE PERIOD IS LIMITED TO \$15,000.00 AND \$0/100 (\$0,000.00) AND, SUBJECT TO THE SAME LIMIT FOR EACH PERIOD THE COMPANY'S TOTAL LIABILITY FOR SUCH DAMAGES OR ACCOUNT OF INJURY TO OR IS THE LIMIT OF ANY NUMBER OF PERIODS IS LIMITED TO FIFTY PERCENT OF \$0/100 (\$50,000.00)

Nothing herein contained shall vary, alter or extend any provision of the policy, other than as above stated.

PL-22957

Attached to and forming part of Policy No. _____ issued by the GEORGIA CASUALTY COMPANY, of Atlanta, Georgia, to ONE. O. J. RYAN

In Witness Whereof, the GEORGIA CASUALTY COMPANY, of Atlanta, Georgia, has caused these presents to be signed by its President and Vice-President.

E. P. Amery
Vice President

W. B. Starnes
President

Countersigned and dated at SAE FRANCISCO this 17th

day of APRIL, 192 26

(Page 5 of 10) 3-3-26

General Agent

Right of Recovery

E-16

IT IS UNDERSTOOD AND AGREED, notwithstanding anything contained in this policy to the contrary, that in the event of bankruptcy or insolvency of the Assured hereunder shall not release the Company from the payment of damages for injuries sustained or loss occasioned during the life of this Policy and in case judgment shall be secured against said Assured by the injured person or his heirs or personal representatives in case death resulted from the accident, an action may be brought by said injured person or his heirs or personal representatives in case the accident caused his death, to recover on the Policy the amount if such judgment, not exceeding the amount of this Policy, and subject to all its other terms and limitations.

Nothing herein contained shall vary, alter or extend any provision of this Policy, other than as above stated

Attached to and forming part of Policy No. 75-22957 issued by the GEORGIA CASUALTY COMPANY, of Atlanta, Georgia, to ONE. O. J. RYAN

In Witness Whereof, the GEORGIA CASUALTY COMPANY, of Atlanta, Georgia, has caused these presents to be signed by its President and Secretary.

E. P. Amery
Secretary

W. B. Starnes
President

Countersigned and dated at SAE FRANCISCO, this 17th day of APRIL, 19 26

(Page 6 of 10) 3-3-26

General Agent

SCHEDULE OF STATEMENTS

This Policy is based upon the following statements which are represented by the Assured to be true and correct, and in consideration of which the Policy is issued:

- (1) My full name is 62 years SAF FRANCISCO, CAL. State CALIFORNIA.
- (2) My age is 240 JACOBUS ST., City CALIFORNIA.
- (3) My office is STREET AND WISCONSI
- (4) I am not interested in any other office, except as follows: NO EXCEPTIONS
- (5) My residence is STEWART HOTEL, City SAF FRANCISCO, CALIFORNIA, State CALIFORNIA.
- (6) I am duly qualified STREET, PHILADELPHIA AND STURGE graduated in the year 1898 from UNIVERSITY OF PENNSYLVANIA College of OBSTETRIC OF PENN. MEDICAL SCHOOL
- (7) Since graduation I have practiced my profession in the following places only: PHILADELPHIA, PENNSYLVANIA - ANGLAND, GERMANY AND SAN FRANCISCO, CALIFORNIA.

- (8) I have no defense or indemnity or liability insurance and have no application for such insurance pending, except as follows: NO EXCEPTIONS - NONE
- (9) I am a member in good standing of the following medical associations and societies: OREGON STATE AND AMERICAN MEDICAL

(10) No claim or suit is pending against me for damages on account of alleged error or mistake or malpractice and no claim has been paid by me and no judgment has been entered against me for damages on account of alleged error or mistake or malpractice, except as follows:

(11) I am not in the employ of any person or firm or corporation and I am not connected with any hospital or clinic or other institution, except as follows:

(12) I have no partner or partners, except as follows: NO EXCEPTIONS

(13) I have no assistant or assistants, except as follows: NO EXCEPTIONS

(14) I am in good health and in full possession of all senses and free from any intemperate habit, except as follows: NO EXCEPTIONS

(15) I do not advertise in the public prints.

(16) I agree that the Company shall not be bound by statements made to or known to be acquired by agents or brokers not written hereto.

2534

**Physician's Liability
Policy**

NO. PH 33987

**Geary's
Casualty Company**
SAN FRANCISCO, CAL.

ASSURED

GEO. O. JANTIS

Premium \$ 25.00

Expiring MAY 25th, 1926

Please Read Your Policy

OLDS AND STOLL
GENERAL INSURANCE BROKERS
306 EIGHT STREET, SAN FRANCISCO, CAL.
PHONE 170-1211, 1700

Ol. A. L. Th. Co. and Bond
1/30/26
Boyd
Olfs. Schatz No. 1
Sept. 15, 1928
W. J. Schilling

Thereafter the judgment-roll in the case of "Laurett Boyd vs. George O. Jarvis" in the Superior Court of the City and County of San Francisco, State of California, numbered 174,698 was filed and received in evidence and marked, Plaintiff's Exhibit No. 2.

By stipulation Plaintiff's Exhibit No. 2 is not set out in full herein for the reason that it would serve no useful purpose and no exception is taken to the introduction of it in evidence. In substance Plaintiff's Exhibit No. 2 is as follows:

PLAINTIFF'S EXHIBIT No. 2.

The judgment-roll contains (1) plaintiff's complaint for damages for malpractice, (2) defendant's answer to the complaint, (3) the verdict of the jury, (4) the judgment on the verdict, and (5) the certificate of the County Clerk of the City and County of San Francisco to the judgment-roll.

The verified complaint was filed in the office of the County Clerk of the City and County of San Francisco on September 21, 1926. The complaint alleges that defendant George O. Jarvis is a physician and surgeon duly licensed to practice in California and practicing in San Francisco; that in October, 1925, plaintiff consulted defendant as such physician and surgeon and became his patient paying for his services; that in November, 1925, defendant advised and performed an operation in the left nasal region of plaintiff's head; that in said operation defendant negligently, carelessly and with knowledge permitted a small part of a metal

instrument used in the operation to remain in said portion of plaintiff's head; that as a result of such negligence plaintiff suffered great pain and anguish and will be compelled to undergo an operation to remove said metal part; [25] that plaintiff expended the reasonable sum of \$250.00 for services of a surgeon who made an unsuccessful attempt to remove the metal from her head; that by reason of defendant's negligence plaintiff was damaged in the sum of \$25,250.00 and prayed for damages in said amount.

The verified answer of defendant to the complaint was filed in the office of the County Clerk of the City and County of San Francisco on November 19, 1926. The answer denies any and all negligence on defendant's part in connection with the operation or in connection with his services and treatment of plaintiff; denies that plaintiff was damaged in the sum of \$25,250.00 or in any sum; and alleges contributory negligence of the plaintiff in failing, neglecting and refusing to follow defendant's instructions and treatment.

The verdict of the jury is dated and was filed in open court by the Clerk of the Superior Court of the City and County of San Francisco on October 17, 1927, and is as follows:

"We, the jury in the above-entitled cause, find a verdict in favor of the plaintiff Laurett Boyd and against the defendant George O. Jarvis for the sum of Five Thousand Dollars.

Signed—JAS. W. HARRIS,
Foreman."

(Testimony of George O. Jarvis.)

The judgment on the verdict was entered on October 18, 1927, in Book 212 of Judgments at page 398 in favor of plaintiff Laurett Boyd and against defendant George O. Jarvis in the sum of \$5,000, with interest at 7% from the date thereof with costs amounting to \$76.50.

The certificate of the County Clerk of the City and County of San Francisco, State of California, and *ex-officio* Clerk of the Superior Court is dated October 19, 1927, and certifies [26] to the correctness of the judgment entered and recorded and that the papers annexed constituted the judgment-roll in said cause.

Thereupon the testimony of GEORGE O. JARVIS for plaintiff continued as follows:

I paid the premium on this policy of insurance to the representative of the Georgia Casualty Company. When I was sued by Mrs. Boyd I turned the complaint and summons in the case over to the Georgia Casualty Company to defend me and offered to assist it in the defense of the suit.

“Mr. CUNHA.—Q. I will ask you did you perform all the conditions on your part in this policy to be performed?

A. Yes.

Mr. BACON.—Just a moment. I object to that as calling for the conclusion of the witness.

The COURT.—Objection overruled.

Mr. BACON.—Exception. I will ask that the answer be stricken on the ground that the question calls for a conclusion of the witness.

(Testimony of George O. Jarvis.)

The COURT.—Objection overruled.

Mr. BACON.—Exception.

The COURT.—The witness answered the question ahead of the objection, but the objection will stand as entered before the question was answered.”

The testimony of GEORGE O. JARVIS for the plaintiff then continued as follows:

On November 16, 1927, I filed a voluntary petition in bankruptcy in the Southern Division of the United States District Court for the Northern District of California and on that [27] day was declared a bankrupt. I have not paid any money to Mrs. Boyd on account of the judgment which she secured against me except whatever moneys have been paid her through the Bankruptcy Court.

“The COURT.—How much has been paid through the Bankruptcy Court?

Mr. CUNHA.—\$355.75. That is all.”

Cross-examination.

Upon cross-examination the witness GEORGE O. JARVIS testified as follows:

I am also here pursuant to a subpoena served upon me by the defendant and I have brought with me whatever documents I have which are referred to in the subpoena. I brought the policy which was all I had. I did not have the letters or notices of rescission of the policy addressed to me by the Georgia Casualty Company under date of August 26, 1926. I had received the letters and I think the attorney took them. At any rate they could not be

(Testimony of George O. Jarvis.)

found. I did receive the letters dated August 26, 1926 from the Georgia Casualty Company referred to in the subpoena.

These copies of letters which you now show me are copies of the letters that I received.

Thereupon defendant offered the documents in evidence and the following proceedings were had:

“Mr. BACON.—We offer in evidence at this time two letters, both dated August 26th, addressed to Dr. George O. Jarvis, the witness on the stand, by the Georgia Casualty Company, signed by its resident manager, George F. Kyle, reading [28] as follows:

Mr. CUNHA.—We object to the offer on the ground that it is not proper cross-examination. Further, upon the ground that no foundation has been laid for the introduction of the copies. And upon the further ground that they are self-serving, and not binding upon the plaintiff in this case.

The COURT.—As to the objection that they are not proper cross-examination, I presume you are making the doctor your own witness as to that, are you?

Mr. BACON.—I can hold this until the defendant's case, and prove the rescission at that time. That may be the better order to adopt.

The COURT.—Very well, let that be the order.”

The testimony of GEORGE O. JARVIS upon cross-examination then continued as follows:

Upon direct examination I testified that the papers served upon me in the case of Boyd vs.

(Testimony of George O. Jarvis.)

Jarvis were turned over to the Georgia Casualty Company with the request that they defend me in the suit. Either I or my attorney did this but I cannot state that I personally at any time tendered the defense of the case to the Georgia Casualty Company.

The notices of rescission which were shown to me a moment ago were not received by me prior to the commencement of the suit by Mrs. Boyd against me. The suit is what brought the notices from the Georgia Casualty Company. My recollection is that there was nothing said by the Georgia Casualty Company to me until after suit had been instituted. I don't know what the legal definition of the commencement of a suit is and, although the letters or notices of rescission are dated August 26, 1926, [29] and the complaint in Mrs. Boyd's suit against me appears to have been filed on September 21, 1926, the fact that she either sued or was about to sue was what brought the letters from the Georgia Casualty Company. I think the letters were probably received about the date which the letters bear, August 26, 1926. In connection with the letters I also received back the amounts mentioned in the letters as premiums which I paid for the policies. I turned that money back to my attorney, Harry Godsell (Gottesfeld), along with the letters for him to give to the Georgia Casualty Company.

TESTIMONY OF LAURETT BOYD, FOR
PLAINTIFF.

LAURETT BOYD was then called as a witness for the plaintiff and, being duly sworn, testified as follows:

I am the plaintiff in the action entitled "Laurett Boyd vs. George O. Jarvis," in the Superior Court in and for the City and County of San Francisco State of California, and numbered 174,698, in the records of that court. In that action I recovered a judgment in the sum of \$5,000.00 principal, and \$76.50 costs, and I have received no money on account of that judgment except the sum of \$355.75, which was paid to me by the bankrupt estate of George O. Jarvis.

"Mr. CUNHA.—At this time we will offer in evidence Section 3738 of the Statutes of the State of California, found in the 1923 edition, General Laws of California, at page 1371, part 1 thereof. We ask that the same be considered as having been read in evidence.

Plaintiff rests." [30]

Thereafter defendant's counsel moved for a non-suit upon the grounds that the allegations of the complaint had not been proven by the plaintiff in that it had not been shown that all of the conditions of the policy of insurance required to be performed by Dr. Jarvis had been performed and that the policy offered in evidence is at variance with the

(Testimony of George O. Jarvis.)

allegations of plaintiff's second amended complaint. The motion was denied by the Court and an exception was taken by the defendant.

TESTIMONY OF GEORGE O. JARVIS, FOR
DEFENDANT (RECALLED).

GEORGE O. JARVIS was recalled as a witness for the defendant and testified as follows:

I identify the documents which are now shown me as copies of letters which were received by me at approximately the dates appearing thereon. The subpoena directed me to bring the originals but I did not have them and could not do it.

Thereupon defendant offered the letters in evidence and in that connection the following proceedings were had:

“Mr. BACON.—We offer these letters in evidence.

Mr. CUNHA.—Objected to on the ground that no proper foundation has been laid for introduction of copies; furthermore, the letters are self-serving, and not binding on the plaintiff.

The COURT.—The letters may be self-serving, but I think the proper foundation is laid. The doctor said he received the letters, and turned them over to somebody, and, so far as he is concerned, they are lost, and cannot be found, and that he remembers he received the originals. It may be that the letters are subject to your objection that they are self-serving. [31]

Mr. BACON.—At this time I will read the let-

ters, which are notices of rescission. It is on the stationery of the Georgia Casualty Company, Atlanta, Georgia, August 26, 1926.

‘George O. Jarvis,

240 Stockton Street,

San Francisco, California.

Policy No. PH-33967.

Dear Sir: Referring to above indicated policy issued to you by Georgia Casualty Company, we beg to state that we have just discovered that your statement 10 in the schedule of the policy is false; accordingly, the company rescinds the policy, and returns to you the premium of \$25 enclosed herewith.’

The other letter is substantially the same, and refers to another policy.

The COURT.—That statement referred to is set up in your answer to the complaint, in paragraph VII, I presume?

Mr. BACON.—Yes, your Honor. I do not recall the paragraph, but it is set up in the answer. Yes, it is in paragraph VII. I offer these letters in evidence.

Mr. CUNHA.—We make the same objection.

The COURT.—There is no proof here before me that there was any suit pending against the doctor for damages at the time he made the application for the policy.

Mr. BACON.—I am going to offer proof, your Honor.

The COURT.—Objection overruled.

Mr. CUNHA.—Exception.

The COURT.—You may hereafter move to strike unless that proof is supplied.”

Thereupon the documents were received in evidence and marked Defendant's Exhibit "A." Defendants' Exhibit "A" is as follows: [32]

Georgia Casualty Company
Atlanta, Georgia

August 26, 1928.

Dr. George O. Jarvis,
240 Stockton St.,
San Francisco, Calif.

Dear Sir: Policy No. PH-33967

Referring to the above indicated policy issued to you by the Georgia Casualty Company, we beg to state that we have just discovered that your Statement Ten (10) in the schedule of the policy is false. Accordingly the company rescinds the policy and returns to you the premium of \$25.00 enclosed herewith.

Yours truly,

GEORGIA CASUALTY COMPANY

By: George O. Jarvis
Resident Manager

United States District Court,

No. 18076

Boyd vs. Georgia Casualty Co.

Plt's Exhibit No. A

Sept. 18, 1928

WALTER B. MALING, Clerk

W. B. Malting Deputy Clerk

Georgia Casualty Company
Atlanta, Georgia

August 26, 1926.

Dr. George O. Jarvis,
240 Stockton St.,
San Francisco, Calif.

Dear Sir: Policy No. 72-6286

Referring to the above indicated policy issued to you by the Georgia Casualty Company, we beg to state that we have just discovered that your Statement Nine (9) in the schedule of the policy is false. Accordingly the company rescinds the policy and returns to you the premium of \$20.00 enclosed herewith.

Yours truly,

GEORGIA CASUALTY COMPANY

By: *George O. Jarvis*
Resident Manager

(Testimony of George O. Jarvis.)

THEREAFTER the testimony of GEORGE O. JARVIS, recalled by defendant, continued as follows:

The document which is now shown to me bears my signature and is filled out in my own handwriting in so far as the written portion is concerned, and all of the statements therein were made by me at the time I applied to defendant for the policy and all of the statements therein were made by me of insurance. The document is dated May 29, 1925.

Thereupon the document referred to was offered in evidence and in that behalf the following proceedings were had:

“Mr. BACON.—At this time we offer in evidence the application for the policy of insurance before the Court, and ask that the same be considered read in evidence. If no objection is made, I will read the portion to which I refer briefly.

The COURT.—It may be admitted. You may read it.

Mr. BACON.—This document is a form used by the Georgia Casualty Company in applying for policies of insurance. Without reading the entire portion, it is the application admitted by the witness to have been signed by him. It states his name, age, and information relative to his practice as a physician. Paragraph 10 is the one to which particular reference is made:

‘No claim or suit is pending against me for damages on account of alleged error, mistake,

or malpractice, and no claim has been paid by me and no judgment has been entered against me for damages on account of alleged error, or mistake, or malpractice, except as follows: None.'

The statement at the head of the application is:

'This policy is based upon the following statements of fact which are warranted by the assured to be true and correct, and in consideration of which the policy is issued.' [36]

The document is offered in evidence by the defendant.

Mr. CUNHA.—We object at this time, on the ground that no showing has been made that that is actually a part of the policy.

The COURT.—Objection overruled.

Mr. BACON.—The answer to that is that it appears from the exhibit, itself, that the matters are made a part of the policy."

Thereupon the document was received in evidence and marked Defendant's Exhibit "B."

Defendant's Exhibit "B" is as follows:

DEFENDANT'S EXHIBIT "B."

LIABILITY DEPARTMENT
Georgia Casualty Company
Macon, Georgia

(Form DR 14) Iss 6-23 5462

PHYSICIAN'S
LIABILITY
APPLICATION

THREE BLANKS FOR HOME OFFICE USE ONLY								POLICY No.
H. O. No.	Policy Written	Policy Checked	Ledger	Premiums availed	Com.	Class	Div.	P H
RENEWAL OF	ENDORSEMENTS							RATE APPROVED
PH	GENERAL AGENT							
Date of Policy	11.06.24	Period	12 Months	Limits	One Person \$ 5000.00	One Accident \$ 2000.00	Estimated Premium \$ 25.00	

This Policy is based upon the following statement of facts, which are warranted by the Assured to be true and correct, and in consideration of which the Policy is issued:

- My full name is Geo. O. Jarvis
- My age is 52 years
- My office is 240 Stockton (Street and Number)
City San Francisco, State California
- I am not interested in any other office, except as follows: none
- My residence is Stewart Hotel (Street and Number)
City San Francisco, State California
- I am duly qualified Physician - Surgeon graduated in the year 1898
from Univ. of Penna College of Univ. of Penna Medical School
- Since graduation I have practiced my profession in the following places only:
Philadelphia - Penna. Oakland, Oregon
San Francisco, Calif.
- I have no defense or indemnity or liability insurance and have no application for such insurance pending, except as follows: none
- I am a member in good standing in the following medical associations and societies:
Oregon State
Asso. Med.
- No claim or suit is pending against me for damages on account of alleged error, mistake or malpractice, and no claim has been paid by me, and no judgment has been entered against me for damages on account of alleged error, or mistake, or malpractice, except as follows: none
- I am not in the employ of any person, or firm, or corporation, and I am not connected with any hospital or clinic or other institution, except as follows: none
- I have no partner or partners, except as follows: none
- I have no assistant or assistants, except as follows: none
- I am in good health and in full possession of all senses and free from any intemperate habit, except as follows: no excepts
- I do not advertise in the public prints. no
- I agree that the Company shall not be bound by statements made to or knowledge acquired by agents or brokers not written hereon.

Geo. O. Jarvis, M.D. _____ Agents.

BROKERAGE

[Note: Agent must state below name of Broker or Sub-Agent interested in the risk, and rate of brokerage to be paid

Broker or Sub-Agent W. H. Brunley Brokerage 10% per cent.
1040 Geary St.
S. F.

Endorsement

E-1

EFFECTIVE WITH EVEN DATE OF POLICY SPECIFIED

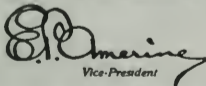
IN CONSIDERATION OF THE PREMIUM CHARGED IT IS HEREBY UNDERSTOOD AND AGREED THAT CONDITION A OF THE INDEMNIFYING AGREEMENTS IS AMENDED TO READ:

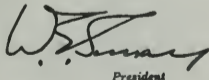
"THE COMPANY'S LIABILITY FOR SUCH DAMAGES ON ACCOUNT OF INJURY TO OR THE DEATH OF ONE PERSON IS LIMITED TO FIVE THOUSAND AND NO/100 (\$5,000.00) AND, SUBJECT TO THE SAME LIMIT FOR EACH PERSON, THE COMPANY'S TOTAL LIABILITY FOR SUCH DAMAGES ON ACCOUNT OF SUCH INJURIES TO OR IN THE DEATH OF ANY NUMBER OF PERSONS IS LIMITED TO TWENTY THOUSAND AND NO/100 (\$20,000.00)

Nothing herein contained shall vary, alter or extend any provision of this Policy, other than above stated.

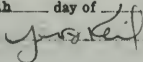
Attached to and forming part of Policy No. PH-33967 issued by the GEORGIA CASUALTY COMPANY, of Atlanta, Georgia, to GEO. O. JARVIS

In Witness Whereof, the GEORGIA CASUALTY COMPANY, of Atlanta, Georgia, has caused these presents to be signed by its President and Vice-President.


Vice-President


President

Countersigned and dated at SAN FRANCISCO this 17th day of APRIL 1925



General Agent

(37)

LIABILITY DEPARTMENT
Georgia Casualty Company
Macon, Georgia

Claims DR 14) to 6-23 5495

M. O. No.	THESE BLANKS FOR HOME OFFICE USE ONLY							POLICY No.
	Policy Written	Policy Checked	Ledger	Premiums	Com.	Class	Div.	PH - 53967
RENEWAL OF	ENDORSEMENTS							RATE APPROVED
PH NEW	RIGHT OF RECOVERY							

GENERAL AGENT

Date of Policy 5/29/25 One Person, \$ 5,000.00
 Period 12 Months Limits One Accident, \$ 20,000.00
 Terminating 5/29/26 Estimated Premium, \$ 25.00

This Policy is based upon the following statement of facts, which are warranted by the Assured to be true and correct and in consideration of which the Policy is issued:

1. My full name is Geo. O. Jarvis
 2. My age is 32 years.
 3. My office is 240 STOCKTON ST. (Street and Number)
 City SAN FRANCISCO, State CALIFORNIA.
 4. I am not interested in any other office, except as follows: NO EXEMPTIONS

5. My residence is STEWART HOTEL, GRAY AND POWELL STREETS, (Street and Number)
 City SAN FRANCISCO, State CALIFORNIA.

6. I am duly qualified PHYSICIAN AND SURGEON graduated in the year 1899
 from UNIVERSITY OF PENNSYLVANIA College of UNIVERSITY OF PENN. MEDICAL SCHOOL

7. Since graduation I have practiced my profession in the following places only:
PHILADELPHIA, PENNSYLVANIA - ASHLAND, OREGON AND SAN FRANCISCO, CALIFORNIA.

8. I have no defense or indemnity or liability insurance and have no application for such insurance pending, except as follows:
NONE

9. I am a member in good standing in the following medical associations and societies:
OREGON STATE & AMERICAN MEDICAL

No claim or suit is pending against me for damages on account of alleged error, mistake or malpractice, and no claim has been paid by me, and no judgment has been entered against me for damages on account of alleged error, or mistake, or malpractice, except as follows:
NONE - NO EXEMPTIONS

11. I am not in the employ of any person, or firm, or corporation, and I am not connected with any hospital or clinic or other institution, except as follows:
NO EXEMPTIONS

12. I have no partner or partners, except as follows: NO EXEMPTIONS

13. I have no assistant or assistants, except as follows: NO EXEMPTIONS

14. I am in good health and in full possession of all senses and free from any intemperate habit, except as follows:
NO EXEMPTIONS

15. I do not advertise in the public prints.
 16. I agree that the Company shall not be bound by statements made to or knowledge acquired by agents or brokers not written hereon.

BROKERAGE

[Note] Agent must state below name of Broker or Sub-Agent interested in the risk, and rate of brokerage to be paid

Broker or Sub-Agent W.H. BRINKLEY, 1040 GRAY ST. Brokerage _____ per cent.

Handwritten notes:
 FILED
 5-30-25
 POLICY RESCINDED
 any date of 2/25/26
 for same reason as above

Policy Void on basis of misstatement

United States Industrial Board.

No. 18076

Boyd ... Georgia Casualty Co.

Boyd's ... B.

Sept. 18, 1928.

WALTER B. MALING, Clerk

By J. A. Maerker Deputy Clerk

Separation

Separation

(Testimony of George O. Jarvis.)

THEREAFTER the testimony of GEORGE O. JARVIS, recalled for defendant, continued as follows:

“Q. At the time you signed this application for a liability policy with the Georgia Casualty Company, prior to that time had you had any claims asserted against you for malpractice by anyone?”

Mr. CUNHA.—We object to that on the ground that it calls for the opinion and the conclusion of the witness; the testimony would be hearsay, and not binding on this plaintiff. The further objection is that they would have to demonstrate that there was an actual claim, meeting the requirement of this policy. The mere conclusion of this witness that a claim was made against him would not be binding on the plaintiff. The question calls for his conclusion as to whether a claim was made against him, or not.

The COURT.—Objection overruled.

Mr. CUNHA.—Exception.

A. No, I would not think I had. The thing that that was based on was—

Mr. CUNHA. — Just a moment. You have answered the question.

Mr. BACON.—The doctor is qualifying the answer.

The COURT.—Q. Do you wish to explain the answer?

A. Perhaps I had better explain.

Q. Your answer is no, isn't it? A. Yes.

(Testimony of George O. Jarvis.)

Q. Now, go ahead with your explanation.

A. There was a woman by the name of Mrs. Anne Bertin who came to me a day after she had had hair dye applied to her head, and she wanted to have me do some operation on her [39] face, which I did. The hair dye irritated and infected the whole scalp, without any regard to what I did, whatsoever. She said it was my fault. I said no, it was not my fault. I said, "You had your hair dyed, which I found out the day afterwards, otherwise I would not have touched her, because that type of hair dye frequently causes a widespread inflammation of the scalp. I had other cases come to me since that time, and before. She said she wanted me to pay her hospital bill. I said, "All right." She said she would raise trouble, and I said, "All right, I will do it to save trouble, although it is not my fault in any way, shape, or form."

I paid her hospital bill and took a release from Mrs. Bertin at that time. I paid her a sum of money but I forget the amount. I think it was not as much as \$525.00 as I remember it. Although the subpoena directed me to bring the releases I do not have them because I could not find them, but such releases were executed by Mrs. Bertin and her husband. No suit was brought by them. The payment to the Bertins and the execution of the releases by them occurred prior to the time that I signed the application which has been offered in evidence. Mr. Williams, the representative of the Georgia Casualty Company, [40] knew all about it and told

(Testimony of George O. Jarvis.)

me it was not anything. I saw Mr. Williams a number of times as a representative of the Georgia Casualty Company on this and other matters and I told him all about it. I said it was not my fault and he said I should not pay it but I said I would rather pay it than have any fuss about it. I think I was insured in the Georgia Casualty Company at the time I paid the money to Mrs. Bertin.

Cross-examination.

Upon cross-examination by the plaintiff the witness GEORGE O. JARVIS testified as follows:

Mr. Williams, the representative of the Georgia Casualty Company, is sitting right here in the courtroom now. I told him about the affair with Mrs. Bertin. That was before the policy was issued by the Georgia Casualty Company. He told me at the time there was no chance in the world of her recovering because it was not my fault and for me not to pay anything or do anything about it, but I said I would rather pay it than have any fuss about it.

TESTIMONY OF WILLIAM H. WILLIAMS,
FOR DEFENDANT.

WILLIAM H. WILLIAMS was thereupon called to the stand as a witness for the defendant and, being duly sworn, testified as follows:

I am the General Agent for the Medical Protective Company of Fort Wayne and I have occupied that position for twelve and one-half years. I have not at any time represented the Georgia Casualty

(Testimony of William H. Williams.)

Company or been employed by the Georgia Casualty Company. [41]

I heard the statement by Dr. Jarvis upon the stand relative to the settlement of a claim of Mrs. Anne Bertin and her husband and the taking of releases. I knew about that circumstance at the time but I had no connection whatever with the Georgia Casualty Company. At that time I was the representative of the Medical Protective Company of Fort Wayne and at that time my company had the policy of insurance against malpractice issued to Dr. Jarvis. The claim of Mrs. Bertin was reported to me as representative of the insurance carrier for Dr. Jarvis at that time. I had something to do with the releases which have been referred to. I met Dr. Jarvis at the office of our attorneys, Ford, Johnson & Bourquin, and Mr. Johnson drew the releases in that case for Dr. Jarvis and Dr. Jarvis told me some three or four days later that the releases had been taken.

Cross-examination.

Upon cross-examination by the plaintiff the witness testified as follows:

I did not see the releases but they were prepared for Mr. and Mrs. Bertin. I do not know whether the release released anyone else besides Dr. Jarvis. My company did not put up the money to get the releases.

Thereupon, in the absence of George F. Keil, manager in San Francisco for the Georgia Casualty Company at the time the policy in question was

(Testimony of William H. Williams.)

issued and whom the defendant desired to produce as a witness on its behalf, it was stipulated by and between counsel for plaintiff and counsel for defendant that the testimony which Mr. Kiel would give would be that, if the answer to statement No. 10 in the application, and which is also [42] repeated in the policy, had been by Dr. Jarvis that he had paid a claim against him for alleged malpractice, the defendant company would not have accepted the risk or issued the policy.

“Mr. CUNHA.—We will stipulate that he would testify to that but we object to the testimony on the ground that it is a self-serving declaration.

The COURT.—Objection overruled. Is that all?

Mr. BACON.—That is all your Honor. The defendant rests.”

TESTIMONY OF MRS. AMANDA MAY, FOR PLAINTIFF.

Mrs. AMANDA MAY was then called as a witness for the plaintiff and, being duly sworn, testified as follows:

I know George O. Jarvis. I was his private secretary and business manager in the month of October, 1924 and was familiar with his affairs.

Thereupon objections of defendant to further questions propounded by plaintiff's counsel to the witness relative to the payment by Dr. Jarvis of the claim of Mrs. Anne Bertin against him were sustained by the Court and the following proceedings had:

“Mr. CUNHA.—I think these questions are admissible, your Honor, on the ground they tend to prove the whole transaction.

The COURT.—The doctor was here. Why didn't you ask him these questions? You had an opportunity to examine him, to make him your own witness, or to cross-examine him on that subject.

Mr. CUNHA.—I did attempt to examine him, but [43] objection was made that it was immaterial, irrelevant and incompetent.

The COURT.—You mean as to whether or not he borrowed the money to pay a claim?

Mr. CUNHA.—I mean in regard to what he had done about performing any operation on the lady. I attempted to go into the whole transaction.

The COURT.—It did not make any difference what he did. This woman made some claim that she had been injured. He paid the claim. The operation he performed, it seems to me, was immaterial, in view of that testimony.

Mr. CUNHA.—It would tend to prove whether there was an actual claim that had been made.

The COURT.—He says there was, and he paid the money. There must have been some claim made, or he would not have paid the money.”

At the conclusion of the testimony each party moved for judgment in its favor and said motions and the cause were thereupon ordered submitted by the Court for decision.

That thereafter and on the 10th day of October, 1928, the Court ordered that plaintiff have judgment

for the sum of \$4,720.75, together with interest on said sum from October 17, 1927, and costs, to which ruling defendant duly excepted.

Now, within the time required by law, the rules of this court and stipulation of the parties said defendant proposes the foregoing as and for its bill of exceptions to the rulings of said Court made during the trial of said action and the decision of said Court, and prays that it may be settled and allowed as correct.

Dated: San Francisco, December 15th, 1928.

REDMAN & ALEXANDER,
Attorneys for Defendant. [44]

STIPULATION TO THE FOREGOING AS
THE BILL OF EXCEPTIONS IN THE
ABOVE-ENTITLED ACTION AND TO
THE CORRECTNESS OF THE SAME.

It is hereby stipulated that the foregoing bill of exceptions is correctly engrossed, is true and correct and that the same may be settled and allowed as defendant's bill of exceptions to the decision and judgment in the above-entitled action.

Dated: December 31, 1928.

HARRY I. STAFFORD,
Attorney for Plaintiff.
REDMAN & ALEXANDER,
Attorneys for Defendant.

ORDER SETTLING, CERTIFYING AND ALLOWING BILL OF EXCEPTIONS.

The attached and foregoing bill of exceptions now being presented in due time and found to be correct, I do hereby certify that the said bill is a full, true and correct bill of exceptions in the above action and that the recitals therein regarding the evidence are true and correct and the same is accordingly hereby approved, settled, certified and allowed.

Dated: January 4th, 1929.

A. F. ST. SURE,
United States District Judge.

[Endorsed]: Service of the within proposed bill of exceptions admitted this 15th day of December, 1928.

HARRY I. STAFFORD,
Attorney for Plaintiff.

Filed Jan. 3, 1929. [45]

[Title of Court and Cause.]

PETITION FOR APPEAL.

To the Honorable A. F. ST. SURE, Judge of the United States District Court:

The above-named defendant Georgia Casualty Company, a corporation, feeling aggrieved by the decision and order of the Court made and entered on the 10th day of October, 1928, granting to plaintiff judgment in the sum of \$4,720.75, together with

interest on said sum from October 17, 1927, and costs, and by the judgment of the Court entered herein on the 10th day of October, 1928, in accordance with said order and decision, does hereby appeal from said order and judgment to the United States Circuit Court of Appeals for the Ninth Circuit, under and according to the laws of the United States in that behalf made and provided, for the reasons set forth in the assignment of errors filed herewith and it prays that its plea be allowed and that citation be issued as provided by law and that a transcript of the record, proceedings and documents upon which said decree was based, duly authenticated, be sent to the United States Circuit Court of Appeals for the [46] Ninth Circuit under the rules of such court in such case made and provided.

And your petitioner further prays that all further proceedings be suspended, stayed and superseded until the determination of said appeal by said United States Circuit Court of Appeals and that the proper order relating to and fixing the amount of security to be required of it be made.

And your petitioner will ever pray, etc.

Dated: San Francisco, January 3d, 1929.

REDMAN & ALEXANDER,
Attorneys for Defendant.

[Endorsed]: Filed January 3, 1929. [47]

[Title of Court and Cause.]

ASSIGNMENT OF ERRORS.

Comes now Georgia Casualty Company, a corporation, the defendant in the above-entitled action, and contends that, in the record, opinion, decision and final judgment in said cause, there is manifest and material error, and in connection with and as a part of its appeal herein makes and files the following assignments of error upon which it will rely in the prosecution of its appeal in said cause:

I.

That the United States District Court for the Northern District of California erred in deciding that the false statement of Dr. George O. Jarvis (the insured) that no claim had been paid by him on account of alleged error or mistake or malpractice in his application to defendant for the policy of indemnity insurance upon which this action is based was not a breach of warranty, avoiding the policy.

II.

That said Court erred in deciding that the false statement of Dr. George O. Jarvis (the insured) that no claim had been [48] paid by him on account of alleged error or mistake or malpractice in his application to defendant for the policy of indemnity insurance upon which this action is based was not a false representation as to a fact material to the acceptance of the risk by defendant which

avoided the policy and entitled defendant to rescind said policy or contract of insurance.

III.

That said Court erred in deciding that the policy of insurance was not rescinded in the manner and within the time provided by law.

IV.

That said Court erred in deciding that, since the right of the plaintiff to sue for damages for injuries sustained had accrued during the life of the policy and before the attempted rescission, such right was therefore not affected by anything that may have occurred thereafter between the insurer and the insured.

V.

That said Court erred in refusing to decide or hold that plaintiff was bound by the notice of rescission of the policy given by defendant to the insured, Dr. George O. Jarvis.

VI.

That said Court erred in refusing to decide or hold that the policy of insurance upon which plaintiff sued was rescinded in the manner and within the time provided by law and that such rescission precluded any recovery thereon by plaintiff.

VII.

That said Court erred in refusing to decide that appellant was entitled to rescind the contract or policy of insurance at any time before the commencement of an action upon the [49] contract

or policy and that such rescission was binding upon the plaintiff.

VIII.

That said Court erred in holding that Dr. George O. Jarvis, the insured, had performed all the conditions of said policy to be by him kept and performed.

IX.

That said Court erred in ordering, in rendering and in entering the final judgment herein dated October 10, 1928.

X.

That said Court erred generally in refusing to order judgment in favor of defendant and against plaintiff.

XI.

That said Court erred in ordering judgment for plaintiff against defendant in the sum of \$4,720.75, together with interest on said sum from October 17, 1927, and costs.

XII.

That said Court erred in ordering judgment for plaintiff for any sum at all.

XIII.

That said Court erred in refusing to order judgment for defendant upon the evidence in said cause.

XIV.

That said Court erred in deciding that the evidence was sufficient to justify a judgment for the plaintiff, and that the evidence was not sufficient to justify a judgment for the defendant.

WHEREFORE, defendant prays that said order and judgment be reversed, and that an order be entered reversing the order and judgment of the lower court in said cause, and that said [50] Court be directed to render and enter judgment in favor of defendant.

Dated: San Francisco, January 3d, 1929.

REDMAN & ALEXANDER,
Attorneys for Defendant.

[Endorsed]: Filed Jan. 3, 1929. [51]

[Title of Court and Cause.]

ORDER ALLOWING APPEAL.

Upon motion of Messrs. Redman & Alexander, attorneys for the above-named petitioner and defendant Georgia Casualty Company, a corporation, and upon filing the petition of said defendant for appeal,—

IT IS ORDERED that an appeal be and it is hereby allowed to have reviewed in the United States Circuit Court of Appeals for the Ninth Circuit the order and judgment entered herein on the 10th day of October, 1928, in favor of plaintiff and against said defendant, and that the amount of the bond as required by law on said appeal be and the same is hereby fixed at the sum of \$6,000.00; and said bond shall act as a supersedeas and cost bond and execution shall be stayed pending the outcome of said appeal.

Dated: January 4, 1929.

A. F. ST. SURE,
United States District Judge.

[Endorsed]: Filed Jan. 4th, 1929. [52]

[Title of Court and Cause.]

BOND ON APPEAL.

KNOW ALL MEN BY THESE PRESENTS:
That we, Georgia Casualty Company, a corporation, as principal, and National Surety Company, a corporation organized and existing under the laws of the State of New York and duly authorized to transact business and issue surety bonds in the State of California, as surety, are held and firmly bound unto Laurett Boyd in the sum of Six Thousand Dollars (\$6,000.00), to be paid to the said Laurett Boyd, her executors, administrators or assigns; to which payment, well and truly to be made, we bind ourselves, our successors and assigns, jointly and severally, by these presents.

Sealed with our seal and dated this 4th day of January, 1929.

WHEREAS, lately at a District Court of the United States for the Southern Division of the Northern District of California, Second Division, in a suit pending in said court between Laurett Boyd, plaintiff, and Georgia Casualty Company, a corporation, defendant, a judgment was rendered against the said defendant on the [53] 10th day

of October, 1928, for the sum of \$4,720.75, together with interest on said sum from October 17, 1927, and costs; and

WHEREAS, the said defendant, Georgia Casualty Company, having obtained from said court an appeal to the United States Circuit Court of Appeals for the Ninth Circuit to reverse the judgment in the aforesaid suit, and a citation directed to the said Laurett Boyd citing and admonishing her to be and appear at the United States Circuit Court of Appeals for the Ninth Circuit to be holden at San Francisco, in the State of California, according to law within thirty days from the date of said citation,—

NOW, THEREFORE, the condition of this obligation is such that, if the said defendant, Georgia Casualty Company, shall prosecute its said appeal to effect and satisfy the judgment against it and answer all damages and costs if it fail to make its plea good, then the above obligation shall be void; otherwise, to remain in full force and effect.

And further the undersigned Surety agrees that in case of a breach of any condition hereof, the above-entitled court may, upon notice to the undersigned National Surety Company of not less than ten (10) days, proceed summarily in the above-entitled cause to ascertain the amount which said National Surety Company as Surety is bound to pay on account of such breach and render judgment therefor against it and award execution thereof,

not exceeding, however, the sums specified in this undertaking.

GEORGIA CASUALTY COMPANY.

By ARTHUR M. BROWN,

Its Attorney-in-Fact.

NATIONAL SURETY COMPANY.

[Seal]

By H. C. ROACH,

Its Attorney-in-Fact. [54]

The within and foregoing bond on appeal is hereby approved, both as to sufficiency and form.

Dated: January 5, 1929.

A. F. ST. SURE,

United States District Judge.

[Endorsed]: Filed January 5th, 1929. [55]

[Title of Court and Cause.]

PRAECIPE FOR TRANSCRIPT OF RECORD.

To the Clerk of Above-entitled Court:

Please prepare record on appeal in the above-entitled cause and include therein the following:

Second amended complaint—filed May 2, 1928.

Answer to second amended complaint—filed July 13, 1928.

Stipulation waiving trial by jury—filed Sept. 18, 1928.

Amendment to second amended complaint—filed Sept. 18, 1928.

Memorandum opinion ordering judgment for plaintiff—filed October 10, 1928.

The judgment entered in the above cause in favor of plaintiff and against defendant—filed Oct. 10, 1928.

Stipulation as to Plaintiff's Exhibit No. 2 on appeal—filed December 8, 1928.

Engrossed bill of exceptions.

Petition for appeal.

Assignment of errors.

Order allowing appeal.

Citation on appeal.

Bond on appeal.

This praecipe.

Dated January 4th, 1929.

REDMAN & ALEXANDER,
Attorneys for Defendant.

Service of the within praecipe for transcript of record admitted this 5th day of January 1929, and stipulated the papers and documents therein mentioned are sufficient for said transcript.

HARRY I. STAFFORD,
DEAN CUNHA,
Attorneys for Plaintiff.

[Endorsed]: Filed Jan. 5th, 1929. [56]

CERTIFICATE OF CLERK U. S. DISTRICT
COURT TO TRANSCRIPT OF RECORD.

I, Walter B. Maling, Clerk of the District Court of the United States, in and for the Northern District of California, do hereby certify the foregoing 56 pages, numbered from 1 to 56, inclusive, to be a full, true and correct copy of the record and pro-

ceedings as enumerated in the praecipe for record on appeal, as the same remain on file and of record in the above-entitled suit, in the office of the Clerk of said court, and that the same constitutes the record on appeal to the United States Circuit Court of Appeals for the Ninth Circuit.

I further certify that the cost of the foregoing transcript of record is \$31.25; that the said amount was paid by the defendant and that the original citation issued in said suit is hereto annexed.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said District Court this 2d day of February, A. D. 1929.

[Seal] WALTER B. MALING,
Clerk United States District Court for the Northern
District of California. [57]

CITATION ON APPEAL.

United States of America,—ss.

The President of the United States, to Laurrett Boyd and Messrs. Harry I. Stafford and Dean Cunha, Her Attorneys, GREETING:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals for the Ninth Circuit, to be holden at the city of San Francisco, in the State of California, within thirty days from the date hereof, pursuant to an order allowing an appeal, of record in the Clerk's office of the United States District Court for the Northern District of California, Southern Division, wherein Laurrett Boyd was plaintiff and Georgia

Casualty Company, a corporation, was defendant, and wherein Georgia Casualty Company is appellant and you are appellee, to show cause, if any there be, why the decree rendered against the said appellant, as in the said order allowing appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

WITNESS, the Honorable A. F. ST. SURE, United States District Judge for the Northern District of California, this 5th day of January, A. D. 1929.

A. F. ST. SURE,
United States District Judge.

Receipt of the within citation on appeal is acknowledged this 5 day of January, 1929.

HARRY I. STAFFORD.
DEAN CUNHA.

[Endorsed]: Filed Jan. 5, 1929. [58]

[Endorsed]: No. 5708. United States Circuit Court of Appeals for the Ninth Circuit. Georgia Casualty Company, a Corporation, Appellant, vs. Laurett Boyd, Appellee. Transcript of Record. Upon Appeal from the United States District Court for the Northern District of California, Southern Division.

Filed February 2, 1929.

PAUL P. O'BRIEN,
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

